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JOHN L. JAMES P.O. BOX 2025 MARIETTA, GA 30061-2025			EXAMINER COOLMAN, VAUGHN	
			ART UNIT	PAPER NUMBER
			3618	
DATE MAILED: 12/29/2005				

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/735,351

Applicant(s)

BERNSTEIN ET AL.

Examiner

Vaughn T. Coolman

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☐ Responsive to communication(s) filed on 31 October 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-3,6,9 and 11-13 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-3,6,9 and 11-13 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: \_\_\_\_\_

## DETAILED ACTION

### *Drawings*

The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the “shelf attached to said upstanding sidewall and positioned inside said bin” and “a ledge” recited in claim 12 must be shown or the feature(s) canceled from the claim(s). Examiner respectfully suggests that claim 12 is drawn to the embodiment shown in FIG 5, and therefore the figure must show all elements recited in the claim. FIG 5 does not show the bottom of the bin (62) or the four downwardly extending protrusions. Furthermore, if the first through fourth openings recited in the claim are indicating the unlabeled circular openings shown in FIGS 1 and 4, those openings must have reference characters in the drawings and the specification. Similarly, the bottom of the bin and the four protrusions must have reference characters associated therewith. No new matter should be entered.

The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they do not include the following reference sign(s) mentioned in the description: 46, 48. Portions of the specification were amended correctly, however, paragraph 0017, line 7 still recites “46, 48”.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either “Replacement Sheet” or “New Sheet” pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will

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be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 9, 11, and 13 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 13 recites the limitation "said handle openings" in line 18 of the claim. There is insufficient antecedent basis for this limitation in the claim. Examiner understands "handle openings" to indicate the first and second spaced apart openings positively recited in line 3 and the claim has been examined as such.

Claims 9 and 11 are rejected as being dependent on claim 13.

***Claim Rejections - 35 USC § 103***

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

**Claims 1 and 2 are rejected under 35 U.S.C. 103(a) as being unpatentable over Weck et al (U.S. Patent No. 6,375,202) in view of Santy et al (U.S. Design Patent No. D476,484).** Weck discloses a pallet, defined in the tenth edition of the Merriam-Webster

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dictionary as a portable platform for handling, storing, or moving materials and packages, that includes: a base member (FIG 14, item 160) having top and bottom surfaces, the top surface defining first (FIG 13, item 32) and second (FIG 13, item 34) spaced apart openings near an edge of said top surface (Column 4, lines 6-8); four hollow legs (FIGS 13 and 14, items 170) extending downwardly from said bottom surface and defining lateral and transverse passageways below said bottom surface. The passageways shown by Weck in FIGS 13 and 14 are obviously capable of receiving lifting forks. Weck also shows four wheel means (FIG 14, items 114 and 110), one for each hollow leg, each said wheel means being fastened to said base member inside an associated hollow leg (Column 9, lines 10-19) and extending downwardly from said base member to an elevation below said associated hollow leg, as shown in FIG 14 so that said wheel means is free to move said base member. Weck discloses a handle (FIGS 1, 2; item 44) having first (FIG 2, item 40) and second (FIG 2, item 42) upright members having bottom end portions, shown in FIGS 1 and 2 removably inserted in said first and second spaced apart openings and a horizontal member (FIG 2, item 62) connecting top portions of said first and second upright members; and first and second flanges (FIGS 1, 14, items 102) attached to said bottom end portions of said first and second upright members, said flanges resting on said top surface, as shown in FIGS 1, 2, and 14 when said upright members are inserted in said first and second openings. Weck does not show the wheel means being generally obscured from view by an associated hollow leg. However, Santy teaches a wheel assembly that includes a hollow leg generally obscuring wheel means (shown in FIGS 1-6). It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the pallet shown by Weck with the wheel assembly as taught by Santy, since such a modification would provide the

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advantage of protecting the wheel means from damage that might occur when contacting vertical surfaces such as walls. [claim 2] Weck in view of Santy discloses all of the elements of the claimed invention as described above, and Weck further shows a panel (FIGS 1, 2, item 56) attached to the first and second upright members (40, 42) below the horizontal member (62).

**Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over Weck et al in view of Santy et al and further in view of Flowers (U.S. Patent No. 5,186,479).** Weck in view of Santy discloses all of the elements of the claimed invention as described above, and Weck further shows the top surface of base member (160) having third (FIG 13, item 144) and fourth (FIG 13, item 146) spaced apart openings (Column 8, line 5) near an opposed edge of the top surface. Weck in view of Santy does not show the pallet including a bin having a sidewall, and the bin having a bottom with two spaced apart downwardly extending protrusions removably inserted in said third and fourth openings of the base member. Flowers, however, teaches the use of a bin (FIG 1, item 24) having a sidewall (FIG 1, item 64) and a bottom (FIG 1, item 62) with two spaced apart downwardly extending protrusions (FIG 1, items 66c) removably inserted in openings (FIG 1, item 78a) located on the base (FIG 1, item 22) of a pallet (FIG 1, item 20). It would have been obvious to one having ordinary skill in the art at the time the invention was made to further modify the pallet shown by Weck as modified by Santy with the removable bin having a sidewall, bottom, and protrusions as taught by Flowers, since such a modification would, according to Flowers, provide the advantage of increasing the cargo capacity of the pallet.

**Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over Weck et al in view of Santy et al and Flowers and further in view of Stallbaumer (U.S. Patent No.**

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**6,758,482**). Weck in view of Santy and Flowers discloses all of the elements of the claimed invention as described above except for the sidewall being closed and said first and second upright members being inside said closed sidewall. However, Stallbaumer teaches the use of a pallet (FIG 4, item 61) in conjunction with a bin (FIG 5, item 71) having a closed sidewall, shown in FIG 5, wherein the first (FIG 5, item 19) and second (FIG 5, item 21) upright members of the pallet handle (FIG 5, item 18) are inside the closed sidewall, as shown in FIG 5. It would have been obvious to one having ordinary skill in the art at the time the invention was made to further modify the pallet shown by Weck as modified by Santy and Flowers, with the bin and handle configuration as taught by Stallbaumer, since such a modification would provide a larger storage area for items due to the fact that the size of the bin is not limited by the placement of the handle.

**Claim 12 is rejected under 35 U.S.C. 103(a) as being unpatentable over Simpson (U.S. Patent No. 5,605,102) in view of Polumbaum et al (U.S. Patent No. 6,905,021 B2) and further in view of Marsilio et al (U.S. Patent No. 5,615,779).** Simpson discloses a pallet (see FIG 1), comprising: a base member (12) having top and bottom surfaces, said top surface defining first and second openings (14) spaced from one another and from a first edge of said top surface, said top surface defining third and fourth openings spaced from one another and from a second opposed edge of said top surface; a bin having an upright sidewall (34) and a bottom (shown in FIG 7), said bottom having four spaced apart downwardly extending protrusions (36) removably inserted in said first, second third and fourth openings of said base, said bottom having a smaller area than said base member creating a ledge (shown in FIG 7) on said base

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member (12) about said bin. Simpson does not show a plurality of hollow legs as described in the claim.

However, Polumbaum teaches a pallet (see FIGS 13 and 14, item 600) including a plurality of hollow legs (620) extending downwardly from a bottom surface and defining a passageway (622) below said bottom surface; a plurality of wheel means (520), one for each leg of said plurality of hollow legs, each said wheel means being fastened to said base member inside (625) an associated hollow leg and extending downwardly from said base member to an elevation below said associated leg so that said wheel means is free to move said base member. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the pallet shown by Simpson, with the base including hollow legs and wheel means as taught by Polumbaum, since such a modification would provide the advantage of, according to Polumbaum, permitting movement of the pallet, for use as a dolly like structure (Column 9, lines 1-2).

Neither Simpson nor Polumbaum teach a shelf attached to an upstanding sidewall of and positioned inside said bin. Marsilio teaches a display rack (see FIG 1) or bin, similar to Simpson, wherein a shelf (23) is attached to an upstanding sidewall (18) of the bin. The shelf is also positioned inside the bin as shown in FIG 1. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the pallet shown by Simpson as modified by Polumbaum with the attached shelf as taught by Marsilio, since such a modification would provide the advantage of, according to Marsilio, increasing lateral stability of the bin/rack (Column 3, line 16).

**Claims 9, 11, and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Weck et al in view of Santy and further in view of Lackey et al (U.S. Patent No. 4,574,709).**

Weck discloses a pallet including: a base member (FIG 14, item 160) having top and bottom surfaces, the top surface defining first (FIG 13, item 32) and second (FIG 13, item 34) spaced apart openings near an edge of said top surface (Column 4, lines 6-8); a plurality of hollow legs (FIGS 13 and 14, items 170) extending downwardly from said bottom surface defining lateral and transverse passageways below said bottom surface. The passageways shown by Weck in FIGS 13 and 14 are obviously capable of receiving lifting forks. Weck also shows a plurality of wheel means (FIG 14, items 114 and 110), one for each hollow leg of said plurality of hollow legs, each said wheel means being fastened to said base member inside an associated hollow leg (Column 9, lines 10-19) and extending downwardly from said base member to an elevation below said associated hollow leg, as shown in FIG 14 so that said wheel means is free to move said base member. Weck also discloses a handle (FIGS 1, 2; item 44) having first (FIG 2, item 40) and second (FIG 2, item 42) upright members having bottom end portions, shown in FIGS 1 and 2 removably inserted in said first and second spaced apart openings and a horizontal member (FIG 2, item 62) connecting top portions of said first and second upright members; and first and second flanges (FIGS 1, 14, items 102) attached to said bottom end portions of said first and second upright members, said flanges resting on said top surface, as shown in FIGS 1, 2, and 14 when said upright members are inserted in said first and second openings. Weck does not show the wheel means being generally obscured from view by an associated hollow leg. However, Santy teaches a wheel assembly that includes a hollow leg generally obscuring wheel means (shown in FIGS 1-6). It would have been obvious to one having ordinary skill in the art at the

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time the invention was made to modify the pallet shown by Weck with the wheel assembly as taught by Santy, since such a modification would provide the advantage of protecting the wheel means from damage that might occur when contacting vertical surfaces such as walls.

Weck does show the top surface having a plurality of leg openings (148, 150), however, he does not show them being positioned closer to a center of said top surface than said first and second openings or a first shelf having a plurality of legs and being positioned on said top surface, said plurality of legs being removably received in said leg openings. However, Lackey teaches a pallet (Column 3, lines 37-38) having a base member (S4) having top (FIG 3) and bottom (FIG 4) surfaces, said top surface defining first and second spaced apart openings (3 and 5) near an edge of said top surface, said top surface having a plurality of leg openings (7-10) positioned closer to a center of said top surface than said first and second openings; and a first shelf (S5) having a plurality of legs (P9-P12) and being positioned on said top surface (FIG 2), said plurality of legs being removably received (Column 3, lines 3-9) in said leg openings.

**[claim 9]** Lackey also discloses that the legs (P9-P12) are detachably attached (Column 1, lines 25-27) to the first shelf (S5). **[claim 11]** Furthermore, Lackey discloses a second shelf (S1) obviously capable of being positioned atop said first shelf (S5), said second shelf having a plurality of legs (P1-P4) adapted to fit into a plurality of openings (3-6) in a top surface of said first shelf to detachably attach said second shelf to said first shelf. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the pallet base member shown by Weck as modified by Santy with the leg openings and shelf structure as taught by Lackey, since such a modification would provide the advantage of, according to Lackey,

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adapting the shelf and its support for use under a wide variety of circumstances and for a number of different products having different weights and physical dimensions (Column 1, lines 28-31).

### ***Response to Arguments***

Applicant's arguments with respect to claims 1-12 have been considered but are moot in view of the new ground(s) of rejection.

### ***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a).

Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Vaughn T. Coolman whose telephone number is (571) 272-6014. The examiner can normally be reached on Monday thru Friday, 8am-6pm EST.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Christopher Ellis can be reached on (571) 272-6914. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Travis Coolman  
Examiner  
Art Unit 3618

vtc

A handwritten signature in black ink, appearing to be 'TC' followed by a stylized flourish, located below the printed name of the examiner.